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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,744	06/29/2001	Regis J. Crinon	042390P11553	1043

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EXAMINER

HUYNH, SON P

ART UNIT PAPER NUMBER

2623

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/895,744

Applicant(s)

CRINON ET AL.

Examiner

Son P. Huynh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 July 2006 and 25 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-17, 19, 20 and 22-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-17, 19, 20 and 22-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/22/2006 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to amended claims 1-9, 11-17, 19-20, 22-29 have been considered but are moot in view of the new ground(s) of rejection.

Claims 10, 18 and 21 have been canceled.

### ***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

The specification does not support "a computer readable medium comprising: executable program instruction....." as claimed in claims 8-9, 20, 22. Instead, the specification (page 8, paragraph 0023) merely describes DTV receiver has a storage area 216a or storage area 218a.

### ***Drawings***

4. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

5. Claims 1-7 are objected to because of the following informalities:

Claim 1 recites limitation “the receiving” in line 4 should be replaced as—the receiving information—

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 16-17,19-20,22-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 16, 20, and 23 recite subject matter “deleting unconsumed multimedia-content stored in a storage area” or “unconsumed multimedia-content is deleted based on an auto management scheme provided by a provider” which was not described in the

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specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification describes the current multimedia content been marked for deletion (page 12, lines 5-6) but the specification does not describe multimedia-content marked for deletion is unconsumed multimedia content. The specification also describes other movies that were not viewed could be identified (page 12, lines 12-13), but the specification does not describe deleting of movies that were not viewed. In addition, the specification describes overwrite the oldest of the stored multimedia content (page 17, paragraph 0038, lines 6-7); "old multimedia-content may be deleted" (page 19, lines 1-5). Since the "old multimedia-content" or "oldest multimedia-content" is not necessarily unconsumed multimedia-content (for example, multimedia-content has been stored in storage longer than the new multimedia-content, however, the multimedia-content is consumed/accessed/viewed by the user, therefore, it remains in the storage). Therefore, the specification does not describe "deleting unconsumed multimedia-content stored in a storage area" or "unconsumed multimedia-content is deleted based on an auto management scheme provided by a provider" as recited in claim 16, 20, or 23.

### ***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 8-9, 20 and 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 8-9, 20, 22 recite a computer readable medium comprising/containing executable program instructions, which when executed by a data processing system.... does not necessarily define structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. Thus, the computer readable medium containing/comprising executable program instructions is treated as nonstatutory functional descriptive material (see M.P.E.P 2106, IV, B an interim guideline pages 52-56).

The limitation of "a computer readable medium comprising... operations comprising:" in lines 1-4 of claim 8, or limitation "a computer readable medium containing... operations comprising" in lines 1-3 of claim 20, should be changed to --a computer readable medium encoded with computer executable instructions being executed by a computer for performing operations comprising: --

### ***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-7, 11-13, 15-17, 19, 23-28 rejected under 35 U.S.C. 102(e) as being anticipated by Hunter et al. (US 2002/0056118 A1).

Regarding claim 1, Hunter discloses a method comprising:

receiving information obtained from at least one of a consumer and a storage device (interpreted as receiving information such as request/demand/viewed-content information, etc. from at least one consumer – see include, but not limited to, figures 0018-0019 , 0092-0093, 0107-0116, figures 10, 11) and a storage (e.g. storage module 230 – figure 11); and

selecting, substantially automatically, multimedia content to be broadcast to the consumer based on predetermined criteria set by a provider and the receiving (e.g. content provider or operator selects movies and automatically blanket transmits the movies via direct satellite broadcast to consumers based on predetermined criteria set by provider and the receiving information such as new release, high demand, etc. – see include, but not limited to, paragraphs 0012, 0014, 0017-0019, 0050, 0092,0093, 0107-0118, 0128, 0139-0142).



Regarding claim 2, Hunter further discloses a selection of the multimedia content is made contemporaneous with the information obtained from at least one of the consumer and the storage area (interpreted as content provider/operator selects movie to provide to consumer according to viewed-content information/demand obtained from consumers – see include, but not limited to, figures 10-11, paragraphs 0109-0118, 0139-0142).

Regarding claim 3, Hunter further discloses wherein the multimedia content is at least one of video, audio, and data (interpreted as movie – paragraphs 0139-0142).

Regarding claim 4, Hunter further discloses scheduling the multimedia content to be broadcast to the consumer based on the selecting (interpreted as scheduling the movies to be broadcast to consumer based on the selecting of content provider/operator (for example, movie at the second level of consumer demand after new release movie is transmitted once per day, movie at next level of consumer demand is transmitted once per week, etc. – see include, but not limited to, paragraphs 0107-0116).

Regarding claim 5, Hunter further discloses the selecting is based on criteria (interpreted as selecting of movies to be broadcast based on viewed-content information, level of consumer demand, new release, etc. – see include, but not limited to, figure 10, paragraphs 0107-0118, 0139-0142, 0147).

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Regarding claim 6, Hunter further discloses wherein the criteria includes consideration of at least one of: whether the multimedia content is intended to be saved/archived (e.g. content provider/operator schedules to broadcast new release movie because it is intended to be saved at the user station – see include, but not limited to, paragraphs 0139, 0147), or whether the multimedia content has been consumer yet (e.g. according to viewed-content information – figure 10, paragraphs 0107-0118), or how many times the multimedia content has been consumed (e.g. based on consumer demand, viewed-content information – figure 10, paragraphs 0107-0118, 0142-0144).

Regarding claim 7, Hunter further discloses receiving is accomplished with at least one of a telephone, a dial up modem, a network, a cable television vision communication, the Internet, and a wireless communication (interpreted as content provider/operator receives consumer demand/request/ or viewed-content information via phone line or Internet – figures 10, 11).

Regarding claim 11, the method as claimed is broader than method as claimed in claim 1, and is rejected as discussed with respect to claim 1.

Regarding claim 12, the additional limitations as claimed correspond to the additional limitations of claim 2, and are analyzed as discussed with respect to the rejection of claim 2.

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Regarding claim 13, the additional limitation of broadcasting is accomplished using opportunistic insertion of data (interpreted as the system operator packages advertisements and movie and then broadcast them for automatically downloading by all customer – see include, but not limited to, paragraph 0147).

Regarding claim 15, 17, the additional limitations as claimed correspond to the additional limitations as claimed in claim 3, and are analyzed as discussed with respect to the rejection of claim 3.

Regarding claim 16, Hunter discloses a method comprising:

transferring multimedia content to a storage area accessible to a consumer's digital television system (interpreted as transferring movies, music, to area of storage 230 accessible to a consumer's digital television system , see include, but not limited to, figure 10-11, paragraphs 0139-0142, 0147);

deleting unconsumed multimedia content stored in the storage area, wherein deleting is based on an auto management scheme provided by a provider (interpreted as central controller generates "customer catalog" and use it to overwrite the less likely to be purchased movies ahead of those recordings which , by analysis at module 340, who more promise of being viewed by the customer.... when content provider/operator automatically downloads a new movie into the storage module – see include, but not limited to, paragraphs 0144, 0138,0141).

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Regarding claim 19, the additional limitations as claimed correspond to the additional limitations as claimed in claim 6, wherein the “criteria” correspond to the “rules” , and are analyzed as discussed with respect to the rejection of claim 6.

Regarding claim 23, Hunter discloses an apparatus comprising:

- a digital television receiver (interpreted as receiver 220 –figure 11) ; and

- a storage area to store multimedia content, wherein the multimedia content is selected based on predetermined criteria set by a provider and on information obtained from at least one of a consumer and a storage area (interpreted as storage module 230 for storing movie content – figure 11, the movie content is selected by content provider/operator based on consumer demand/request/viewed –content information received from consumer – see include, but not limited to, paragraphs 0107-0118, 0139-0142, 0147), and

- unconsumed multimedia content is deleted based on an auto management scheme provided by a provider (interpreted as central controller generates “customer catalog” that determine which movies will be automatically downloaded at that customer’s user station, and used the customer analog to overwrite the less likely to be purchased movie ahead of those recordings which, by analysis at module 340, show more promise of being viewed by the customer (paragraphs 0144, 0138).

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Regarding claim 24-25, the additional limitations as claimed correspond to the additional limitations as claimed in claims 2-3, and are analyzed as discussed with respect to the rejection of claims 2-3.

Regarding claim 26, the limitations of the apparatus as claimed correspond to the limitations of the method as claimed in claim 1, and are analyzed as discussed with respect to the rejection of claim 1, wherein multimedia content selector is read on either content provider or operator – see include, but not limited to, figure 11).

Regarding claim 27, Hunter further discloses a multimedia content scheduler, configured to communicate with the multimedia content selector, to schedule the multimedia content to be broadcast tow the consumer (interpreted as content scheduling/encoding in central controller, configured to communicate with content provider or operator, to schedule the movie to be broadcast to the consumer according to user demand – figure 11, paragraphs 0107-0119).

Regarding claim 28, Hunter further discloses the apparatus further comprises a processor (e.g., central controller or processor at video content provider/operator location– figure 11) to receive the information and execute instructions that select the multimedia content to be broadcast to the consumer (see include, but not limited to, paragraphs 0107-0119, 0137-0142, 0144, 0147);

a storage area (e.g. storage module 230) configured to allow communication with the processor – figure 11, paragraphs 0139-0142, 0144, 0147).

***Claim Rejections - 35 USC § 103***

12. Claims 8-9, 14, 20, 22, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter et al. (US 2002/0056118 A1).

Claims 8 and 9 are directed toward embody the method of claims 1 and 4 in “computer readable medium”. Hunter also system comprises controller and software system for controlling operations such as scheduling transmission (see include, but not limited to, paragraph 0105, 0139, figures 10-11). It would have been obvious to embody the procedures of Hunter as discussed with respect to claims 1 and 4 in a “computer readable medium” in order that the instructions could be automatically performed by a processor.

Regarding claim 14, the Hunter teaches a method as discussed in the rejection of claim 11. However, Hunter does not specifically disclose broadcasting is accomplished with a substantially dedicated channel having a fixed transmission bandwidth. OFFICIAL NOTICE is taken that using a dedicated channel having a fixed transmission bandwidth to transmit data is notoriously well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify

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Hunter with the well known teaching in the art in order to improve efficiency in data transmission (for example, transmit data quicker).

Claims 20 and 22 are directed toward embody the method of claims 16 and 17 in "computer readable medium". Hunter also system comprises controller and software system for controlling operations such as scheduling transmission (see include, but not limited to, paragraph 0105, 0139, figures 10-11). It would have been obvious to embody the procedures of Hunter as discussed with respect to claims 16 and 17 in a "computer readable medium" in order that the instructions could be automatically performed by a processor.

Regarding claim 29, Hunter discloses an apparatus as discussed in the rejection of claim 26. Hunter further discloses DISH 500 system may be utilized to blanket transmit thousands of movies (paragraph 0061). Content scheduling/encoding in central controller schedules to broadcast thousands of movies including new release movies to be broadcast to the consumers (paragraphs 0107-0118). The system also provide on demand movies (paragraph 0137). It is obvious to one of ordinary skill in the art that the apparatus comprises a multimedia content data base server, to store new multimedia content (e.g. new release movies), some of which is selected to be broadcast to the consumer so that the selected movie is provided to user quicker.

***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ong (US 5,815,662) discloses predictive memory caching for media on demand.

Kermode et al. (US 6,018,359) discloses system and method for multicast video on demand delivery system.

Baker et al. (US 5,583,561) discloses multicast digital video data server using synchronization group.

Song et al. (US 2002/0157103) discloses method for digital media playback in a broadcast network.

Caridi et al. (US 6,028,685) discloses interleaved broadcast techniques for wavelength division multiplexed systems.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son P. Huynh whose telephone number is 571-272-7295. The examiner can normally be reached on 9:00 - 6:30.

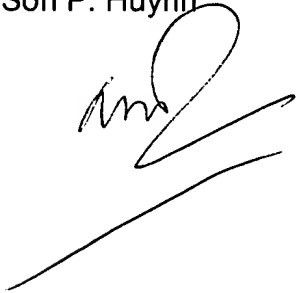
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Son P. Huynh

November 6, 2006

A handwritten signature in black ink, appearing to read 'Son P. Huynh', with a long horizontal flourish extending to the left.